STIPULATION.

JANE BRYER, by her next friend, ROBERT BRYER, *vs.* JAMES BRYER and ROBERT ARTHURS.	No. ——, May Term, 1877.

And now, 28th January, 1897, it is stipulated and agreed between counsel, as follows:

That substitution of the heirs of Jane Bryar, deceased, of January 27th, 1896, be taken and considered as regularly filed as a bill of revivor in this case.

And that the answer of Thomas Campbell, filed 28th January, 1896, be taken as a cross bill.

It is further agreed that the case shall be heard upon the record now before this Court.

L. C. BARTON,
Attorney for Bryar Heirs, Appellees.

W. B. RODGERS,
Attorney for Thomas Campbell.

OPINION OF SUPREME COURT OF PENNSYLVANIA.

JANE BRYAR
vs.
THOS. CAMPBELL, ET AL. } No. , October Term, 1881.

Per Curium.

The fact that the mortgages of McClintock and James on the premises were valid liens, and the mortgagees entirely unaffected by any notice of the secret equity of Mrs. Bryar was undisputed, and the consequence necessarily followed that, whether Campbell had notice or not, he stood in their shoes when he purchased the title derived from them.

It is contended, however, that Campbell having bought at the assignee's sale, subject to these mortgages, was bound to pay them off, and when he did so, they were extinguished. But unless he expressly or by necessary implication *agreed* to pay them, he was not bound to do so, and had an undoubted right to secure his own title by purchasing them and proceeding to perfect his title under them.

Judgment affirmed.

Appeal of JANE BRYAR. | No. 63, October and November Term, 1885.

(Reported in 111 Pa. St., page 81.)

Mr. Justice Trunkey delivered the opinion of the Court January 4, 1886.

Robert Arthurs, assignee of James Bryar, a bankrupt, sold and conveyed the land to Thomas Campbell, for consideration of $3,500, subject to the lien of two mortgages, one to T. McClintock and the other to E. R. James. Subsequently; said Campbell, by his attorney, purchased said mortgages and the judgments which had been obtained thereon, issued a writ of *levari facias* on one of them, by virtue of which the land was sold at sheriff's sale for $50, and on November 18, 1881, the attorney conveyed the title acquired at the sheriff's sale to Campbell.

By the purchase at the assignee's sale Campbell obtained Bryar's equity of redemption, and as respects him nothing more. He bought the land subject to the mortgages, and there is no way that he could hold the land under that purchase and compel Bryar to pay the whole or a part of the debt. His bid was in addition to the debts secured by the mortgages. He contracted no personal liability, and was at liberty to suffer the mortgagees to cause the land to be sold at judicial sale, in which case he could have bought it himself. But when he chose to hold the equity of redemption, and purchased the debt, he freed Bryar from liability for its

payment, and can collect no part thereof out of Bryar's other property, if he has any.

Dollar Savings Bank vs. Burns, 87 Pa. St., 491.

A sheriff's sale of land on a judgment divests the dower of the debtor's wife. And if necessary for the payment of a decedent's debts to sell real estate, the sale thereof by order of court for that purpose divests the widow's dower or estate under the intestate laws. Mortgages are commonly called securities for payment of money, or performance of contract. They are our highest form of securities; in some respects more than a lien, for they are formal pledges of the land. Therefore, no part of mortgaged land is exempted from sale in satisfaction of the mortgage by virtue of the statute exempting "property to the value of three hundred dollars from levy and sale on execution, issued upon any judgment obtained upon contract." Gangwere's Appeal, 36 Pa. St., 466. And the statute which provides that the "widow or children of any decedent, dying within this commonwealth, may retain either real or personal property belonging to said estate to the value of three hundred dollars, and the same shall not be sold, but suffered to remain for the use of the widow and family," has no force against a mortgage given by the decedent in his lifetime. Nerpel's Appeal, 91 Id., 334. A first mortgage is unaffected by a sheriff's sale upon a subsequent lien; the purchaser at such sale buys the equity of redemption. The mortgagee, like a purchaser, is not prejudiced by a secret equity or title, of which he had no knowledge or notice, and where there were no circumstances to put him on inquiry. When Bryar's land was sold by the assignee, he was bankrupt, his whole estate was liable for his debts, and after that sale he had no equitable interest in the land. His wife, under the laws of this commonwealth, had no estate in his land that could stand against his creditors. The sale by the assignee in bankruptcy

did not divest her dower, but she had no equity to prevent a sheriff's sale on a judgment against her husband. Campbell acquired the title of the mortgagees and their right of possession, and had he not been in possession he could have recovered in ejectment. The sheriff's sale is unimpeached for fraud—it evidences that the land was worth no more than the mortgage debts.

A mortgage does not necessarily merge or become extinct by being united in the same person with the fee. When a person becomes entitled to an estate, subject to a charge for his own benefit, he may take the estate and keep up the charge. The question in such case is upon the intention, actual or presumed, of the persons in whom the estates are united. Moore vs. Harrisburg Bank, 8 Watts, 138. Campbell had an interest in preserving the mortgages until after foreclosure and sale, for the purchaser at such sale would take as good title as the mortgagor appeared to have. If the mortgagee had no knowledge of an adverse title he had a right to perfect his title if he could, but he was not bound to buy the property if another should bid a larger sum than he cared to pay. The question is not whether he could purchase the mortgage and use it to compel the debtor to pay it, but whether he can use it to protect himself against adverse claims which could not avail against the mortgagee, or any one holding under him. At the sheriff's sale upon the judgment on the mortgage, all persons were as free to bid as if there had been no sale by the assignee, and the purchaser took title under the mortgagee. It was said by the late Chief Justice that Campbell, unless he expressly or by necessary implication agreed to pay the mortgages, had an undoubted right to secure his own title by purchasing them and proceeding to perfect his title under them. Bryar and Wife vs. Beckett, et al., 13 Pitts. L. J. N. S., 12. In that case the present appellant and appellee were the parties really interested, and the plaintiff claimed to recover on an equitable title, of which

the mortgagees had no knowledge. The judgment was entered against the plaintiff because the sheriff's sale vested the title in Campbell. In this action the plaintiff claims dower in part of the tract which was not included in her equitable title, and her counsel has made a very ingenious argument in support of her claim, but we are not convinced that the controlling principle in the recent decision should be overruled.

Decree affirmed and appeal dismissed at the costs of appellants.